

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**
UNITED STATES OF AMERICA, : 15-cr-00208-FB-VMS-2
:
- versus - : U.S. Courthouse
: Brooklyn, New York
JUAN NICHOLAS HINDU ROBLES, :
Defendant : September 14, 2017
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING
BEFORE THE HONORABLE VERA M. SCANLON
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

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Proceedings

1 THE CLERK: Criminal Cause for Change of Plea
2 Hearing, case number 15-cr-208, United States v. John
3 Doe.

4 Spanish interpreter, Rosa Olivera, previously
5 sworn.

6 (INTERPRETER PREVIOUSLY SWORN)

7 THE CLERK: Counsel, can you state your name
8 for the record?

9 MR. GILMAN: Good morning, your Honor.
10 Andrew Gilman for the United States.

11 THE COURT: Good morning.

12 MR. VILLANUEVA: And good morning, your Honor.
13 Gary Villanueva for the defendant.

14 THE COURT: All right. So let's start with the
15 government. Are there any victims of the offense and if
16 so, has the government fulfilled its obligation to notify
17 them of the hearing and their right to attend and be
18 heard?

19 MR. GILMAN: The notification crime is not
20 applicable to this proceeding, your Honor.

21 THE COURT: Thank you.

22 Kristen, do you want to get the interpreter's
23 appearance?

24 THE CLERK: Rosa Olivera, previously sworn,
25 Spanish interpreter.

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1 THE COURT: All right. So, Mr. Robles, we're
2 going to start with an oath. So I am going to ask you to
3 stand up and my deputy, Ms. Quinlan, is going to
4 administer it to you.

5 J U A N N I C H O L A S H I N D U R O B L E S ,
6 called as a witness, having been first duly sworn,
7 was examined and testified as follows:

8 THE CLERK: Thank you. You can have a seat.

9 THE COURT: All right. So, Mr. Robles, you may
10 know, your case is assigned to a district judge, Judge
11 Block.

12 THE DEFENDANT: Yes.

13 THE COURT: All right. My name is Vera
14 Scanlon. I'm a magistrate judge and Judge Block asked me
15 to help with this proceeding. Your case is assigned to
16 Judge Block, so Judge Block is the judge who will make
17 the ultimate decision as to whether to accept your plea
18 and if he does accept a guilty plea, to sentence you.

19 So you have the right to have your plea heard
20 by Judge Block without any prejudice to you or you can do
21 it before me.

22 Do you understand?

23 THE DEFENDANT: Yes.

24 THE COURT: And the process will be, we'll go
25 through this plea hearing and if you decide to enter a

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1 guilty plea, we'll have that on the record. We're making
2 a recording of today's proceeding and a transcript of
3 that recording will be prepared by a court reporter and
4 it will be provided to Judge Block.

5 Judge Block will have the opportunity and will
6 review the transcript of today's proceeding in connection
7 with his decision as to whether to accept your plea and
8 if he does, with your sentence.

9 So, do you understand that process?

10 THE DEFENDANT: Yes.

11 THE COURT: Okay.

12 THE DEFENDANT: All right.

13 THE COURT: Do you wish to give up your right
14 to have Judge Block listen to your guilty plea and
15 instead proceed here before me today?

16 THE DEFENDANT: Well, no if the attorney, my
17 judge has selected with you, well there's no problem with
18 this.

19 THE COURT: Okay. He has asked me to do it but
20 you don't have to agree. You can say no, I want to talk
21 to him or we can do this here and then the judge will
22 have the opportunity and will read the transcript of
23 today's proceeding.

24 THE DEFENDANT: No, let's do it today. I am
25 grateful to you.

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1 THE COURT: Okay. All right. So in connection
2 with your decision, I have this form. I'm holding up my
3 copy which says that you agree to proceed before me --
4 I'm summarizing it.

5 Was this form read to you in Spanish?

6 THE DEFENDANT: Yes, it was read.

7 THE COURT: And did you go over it with your
8 attorney?

9 THE DEFENDANT: Yes.

10 THE COURT: And do you understand it?

11 THE DEFENDANT: Yes, I did understand it.

12 THE COURT: And are you in agreement with what
13 it says?

14 THE DEFENDANT: Yes, I am in agreement with
15 what it says.

16 THE COURT: All right. On the left side of the
17 page, I am going to point to two signatures.

18 Is this first signature, your signature?

19 THE DEFENDANT: Yes, the first one on top where
20 it says Hindu.

21 THE COURT: That's you.

22 THE DEFENDANT: Yes.

23 THE COURT: All right. And Mr. Villanueva, is
24 that your signature below?

25 MR. VILLANUEVA: Yes, it is, your Honor.

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1 THE COURT: All right. So do you want me to
2 call you Mr. Hindu or Mr. Robles?

3 THE DEFENDANT: As you prefer. I'm called
4 Hindu all the time or Robles. It doesn't matter, either
5 way.

6 THE COURT: It's your choice. I can do all.
7 What would you like?

8 THE DEFENDANT: Well, if you -- if you like,
9 call me Hindu.

10 THE COURT: All right. So, Mr. Hindu, are you
11 agreeing to proceed here before me today voluntarily and
12 of your own free will?

13 THE DEFENDANT: Yes.

14 THE COURT: And has anyone made any threats or
15 promises to you to get you to agree to proceed here
16 before me today?

17 THE DEFENDANT: No. No, I haven't been
18 threatened.

19 THE COURT: All right. How about any promises?
20 Did anyone make any promises to you?

21 THE DEFENDANT: No, I haven't been promised
22 anything, no.

23 THE COURT: All right. So based on what's been
24 said here today by counsel and by Mr. Hindu, I believe he
25 understands his rights with regards to proceeding before

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1 me or proceeding before the district judge and that he's
2 knowingly and voluntarily deciding to proceed before me.

3 So in connection with that, I have signed the
4 consent form.

5 So, Mr. Hindu, in this plea process, I am going
6 to have to have to ask you a number of questions in order
7 to assure myself and in turn, Judge, Block, that your
8 plea is, in fact, a valid plea. If you don't understand
9 what I say, or you don't understand my questions, please
10 let me know and I'll try to clarify what I have said.

11 Do you understand that you have the right to be
12 represented by an attorney at trial and at every other
13 stage of this criminal proceeding, including today's
14 proceeding?

15 THE DEFENDANT: Yes, I know that.

16 THE COURT: All right. And do you understand
17 that if you can't afford a lawyer, the Court would
18 appoint a lawyer for you?

19 THE DEFENDANT: Yes.

20 THE COURT: And is correct --

21 THE DEFENDANT: I don't have any money to pay,
22 yes.

23 THE COURT: Okay. And is it correct, Mr.
24 Villanueva, you have been appointed to represent Mr.
25 Hindu?

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1 MR. VILLANUEVA: Yes, I have. Thank you.

2 THE COURT: All right. And Mr. Hindu, you
3 understand that Mr. Villanueva is your appointed attorney
4 for these proceedings, is that correct?

5 THE DEFENDANT: Yes.

6 THE COURT: Okay. As we go along today, if at
7 any time you need to speak with Mr. Villanueva, just let
8 me know and I'll give you an opportunity to do that.

9 Do you understand?

10 THE DEFENDANT: Correct. Thank you. Yes.

11 THE COURT: All right. So I going to remind
12 you earlier in this proceeding, you just took an oath to
13 tell the truth. So if you answer any of my questions
14 falsely, your answers may later be used against you in a
15 separate prosecution for the crime of perjury or of
16 making a false statement.

17 Do you understand?

18 THE DEFENDANT: I understand.

19 THE COURT: All right. I'm going to start with
20 some background questions.

21 What is your full name?

22 THE DEFENDANT: Juan Nicholas Hindu Robles.

23 THE COURT: And is correct that you're
24 sometimes known as "Hindu," is that correct?

25 THE DEFENDANT: Well, not really. The people

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1 who know me call me Nicholas.

2 THE COURT: Okay.

3 THE DEFENDANT: Nicholas.

4 THE COURT: And are you sometimes called
5 "Nick"?

6 THE DEFENDANT: Just my wife.

7 THE COURT: Okay. All right. And how old are
8 you?

9 THE DEFENDANT: 66 years old.

10 THE COURT: And what's the highest level of
11 education that you have completed?

12 THE DEFENDANT: About seventh -- seventh in
13 number.

14 THE COURT: Seventh grade?

15 THE DEFENDANT: Seventh grade.

16 THE COURT: So about how old were you when you
17 finished school?

18 THE DEFENDANT: About sixteen, fifteen,
19 sixteen.

20 THE COURT: And where did you finish school?

21 THE DEFENDANT: It was in a certain area of
22 Mexico but then my father died and I had to stop going to
23 school.

24 THE COURT: Okay. And since you were about
25 sixteen, have you had any other formal education?

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1 THE DEFENDANT: Well, in reality, the only
2 thing I studied was to be literate, to be able to read
3 and that. I never really went back to school. All I've
4 done is work.

5 THE COURT: Okay.

6 THE COURT: All right. A different line of
7 questions. Are you presently or have you recently been
8 under the care of any doctors?

9 THE DEFENDANT: Yes.

10 THE COURT: Okay. So for what conditions have
11 you been treated by a doctor?

12 THE DEFENDANT: Because the doctor wrongly
13 prescribed a large dose of potassium.

14 THE COURT: Where was the -- I'm sorry, what
15 was he saying?

16 THE DEFENDANT: I had 6.5 level of potassium in
17 my body and I lost -- I went from 170 pounds to 106
18 pounds.

19 THE COURT: All right. When did this happen?

20 THE DEFENDANT: Last year.

21 THE COURT: And just so the record is clear, a
22 6.5 level of potassium is too high, is that correct?

23 THE DEFENDANT: Very, very, high. I almost
24 died.

25 THE COURT: And where did this happen?

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1 THE DEFENDANT: Well, I became ill here in the
2 correctional facility here in Brooklyn and I was taken
3 from there to the hospital. I think the hospital was
4 Brooklyn Hospital. I think that's the name.

5 THE COURT: Okay. And have you been treated
6 for the condition of the too high potassium?

7 THE DEFENDANT: I've been given treatment and I
8 am also under treatment for high blood pressure.

9 THE COURT: Okay. So has your potassium
10 condition been corrected?

11 THE DEFENDANT: It's not entirely -- entirely
12 at a normal level for my body. Sometimes -- I have blood
13 work done every month, just to make sure things are -- to
14 see how things are going. And the potassium affected my
15 entire body. Supposedly, even my kidneys weren't
16 functioning. I was operated.

17 THE COURT: You're pointing at your arm. You
18 had an operation on your arm.

19 THE DEFENDANT: And supposedly, I was to
20 undergo dialysis but they didn't need to do that because
21 supposedly my kidneys are functioning normally.

22 THE COURT: Okay.

23 THE DEFENDANT: And the thing is that I can't
24 stand the pain here in my --

25 THE COURT: Your arm?

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1 THE DEFENDANT: -- in my hand.

2 THE COURT: Your arm hurts, is that right?

3 THE DEFENDANT: Sometimes, I even -- it even
4 makes me cry and I asked them to give me other medication
5 but the only they give me is this, Tylenol.

6 THE COURT: All right. So maybe at the end of
7 this, we'll put in a medical memo and see if there's an
8 update. I don't know if it's something you know more
9 about.

10 MR. VILLANUEVA: Your Honor, this has been a
11 subject of --

12 THE COURT: Ongoing.

13 MR. VILLANUEVA: -- communication between the
14 Court, the government and myself and the MDC and their
15 medical department.

16 THE COURT: All right. So let me ask, is there
17 anything about the potassium condition that would
18 interfere with your ability to understand what we're
19 doing here today?

20 THE DEFENDANT: No, no, no, not just now. I
21 feel pretty good. I take my blood pressure medication,
22 too.

23 THE COURT: All right. So with regard to your
24 kidneys, is there anything about that condition that
25 would interfere with your ability to understand what

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1 we're doing here today?

2 THE DEFENDANT: No, no, no. I'm fine just now.
3 I don't even have any pain or anything.

4 THE COURT: All right.

5 THE DEFENDANT: I just took three Tylenol pills
6 for the pain.

7 THE COURT: All right. And are you clear-
8 headed, even though you took the three Tylenol?

9 THE DEFENDANT: Yes. I am fine, yes.

10 THE COURT: Okay. How about with your high
11 blood pressure, do you take medicine for that?

12 THE DEFENDANT: Yes, yes.

13 THE COURT: All right. What medicine --

14 THE DEFENDANT: Twice a day.

15 THE COURT: -- do you take? Twice a day. What
16 medicine do you take?

17 THE DEFENDANT: Once in the morning and once at
18 night. Oh, my God, it's called G -- I don't remember
19 any --

20 THE COURT: Okay. All right. Did you take the
21 medicine this morning?

22 THE DEFENDANT: Yes, in the morning, yes.

23 THE COURT: All right. And is there anything
24 about your high blood pressure condition that would
25 interfere with your ability to understand what we're

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1 doing here today?

2 THE DEFENDANT: No, I'm fine just now. I feel
3 pretty good.

4 THE COURT: All right. Do you --

5 THE DEFENDANT: I feel well.

6 THE COURT: Well, that's good news. Do you
7 have any other medical conditions?

8 THE DEFENDANT: Well, I have this pain here and
9 my spinal column, I fell in the bathroom. I fell in the
10 bathroom while I was showering and I have this bump here
11 in my back and down here but nothing has been done for
12 me.

13 THE COURT: Okay. Are you in a lot of pain
14 right now?

15 THE DEFENDANT: A little pain. Not too much.
16 I take -- I take three pills. I take them four times a
17 day.

18 THE COURT: All right. Is there anything about
19 the pain that would distract you or make it hard for you
20 to participate in our proceeding today?

21 THE DEFENDANT: No, I'm fine. I feel fine
22 enough to carry on. Thank you.

23 THE COURT: All right. Have you -- are you
24 presently or have you recently been under the care of a
25 mental health professional, such as a psychiatrist,

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1 psychologist or social worker?

2 THE DEFENDANT: No, no. Recently, no, I've
3 never had it.

4 THE COURT: Have you ever been hospitalized or
5 treated for a mental illness?

6 THE DEFENDANT: No.

7 THE COURT: Have you ever been hospitalized or
8 treated for an addiction to drugs or to alcohol?

9 THE DEFENDANT: I have never done drugs. I
10 don't drink liquor. Just cigarettes, I smoked a lot,
11 Marlboros.

12 THE COURT: Okay. So is it right you have not
13 had any alcohol in the last 24 hours?

14 THE DEFENDANT: No, never, no.

15 THE COURT: All right. And are the only drugs
16 or medications that you've taken in the last 24 hours,
17 the Tylenol and the high blood pressure medicine?

18 THE DEFENDANT: Yes, the only thing I take.

19 THE COURT: All right. So is your mind clear
20 as you sit here today?

21 THE DEFENDANT: Of course, yes.

22 THE COURT: And do you understand what we're
23 doing?

24 THE DEFENDANT: Yes.

25 THE COURT: All right. Let me ask Mr.

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1 Villanueva, have you discussed this case with your
2 client?

3 MR. VILLANUEVA: I have, your Honor.

4 THE COURT: And have you done so with the
5 assistance of a translator or do you speak Spanish?

6 MR. VILLANUEVA: With the assistance of a
7 translator.

8 THE COURT: And have you had any difficulties
9 communicating with your client?

10 MR. VILLANUEVA: No.

11 THE COURT: And in your opinion, does Mr. Hindu
12 understand today's proceedings?

13 MR. VILLANUEVA: Yes, your Honor and I would
14 like to also add because of Mr. Hindu's age and his
15 illnesses, I've spent quite a bit of time in the last
16 three weeks speaking with him and going over and over
17 these -- the -- anticipating these proceedings and
18 talking to him at length and I am confident that today
19 his mind is clear and he's sharp and he's able to
20 understand these proceedings.

21 THE COURT: Thank you.

22 MR. VILLANUEVA: You're welcome.

23 THE COURT: I actually have a couple of more
24 questions for you.

25 MR. VILLANUEVA: Oh, sure. I am sorry.

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1 THE COURT: So in your opinion, does he
2 understand the rights that he'll be waiving if he decides
3 to go ahead with a guilty plea?

4 MR. VILLANUEVA: Yes, your Honor.

5 THE COURT: And do you have any doubt as to his
6 competence to plead at this time?

7 MR. VILLANUEVA: None whatsoever.

8 THE COURT: Did you explain to him how the
9 sentencing guidelines work?

10 MR. VILLANUEVA: I have.

11 THE COURT: Did you explain to him the maximum
12 sentence and other possible sentencing consequences that
13 may result from his guilty plea?

14 MR. VILLANUEVA: Yes, I have.

15 THE COURT: All right. Thanks.

16 Mr. Hindu, have you had a sufficient
17 opportunity to discuss your case with your attorney?

18 THE DEFENDANT: Yes.

19 THE COURT: And did you do so with the
20 assistance of a Spanish-language interpreter?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Did you have any difficulties
23 communicating with your attorney?

24 THE DEFENDANT: No, I am not -- never have.

25 THE COURT: Are you fully satisfied with the

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1 representation and legal advice given to you in your case
2 by Mr. Villanueva?

3 THE DEFENDANT: Yes.

4 THE COURT: All right.

5 THE DEFENDANT: Correct.

6 THE COURT: So there is a document called the
7 indictment. The actual title of the one in this case is
8 a superseding indictment.

9 Have you seen this document?

10 THE DEFENDANT: Yes, he told me.

11 THE COURT: All right. Was the document
12 translated for you from English to Spanish?

13 THE DEFENDANT: Yes.

14 THE COURT: Did you get a written copy of the
15 translation or was it read to you in Spanish or both?

16 THE DEFENDANT: Both things, I was given a
17 copy.

18 THE COURT: All right. Do you understand the
19 indictment?

20 THE DEFENDANT: Yes, I know what I am being
21 charged with, what they're saying, yes.

22 THE COURT: Okay. All right.

23 Mr. Villanueva, do you want me to read the
24 indictment?

25 MR. VILLANUEVA: No, your Honor.

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1 THE COURT: All right.

2 MR. VILLANUEVA: And the Court should note that
3 we provided a translated version of the indictment.

4 THE COURT: Mr. Villanueva, you're satisfied
5 that your client is able to read the Spanish well enough
6 to understand the indictment?

7 MR. VILLANUEVA: Yes, your Honor, and we also
8 had it translated in person with the assistance of a
9 Spanish interpreter.

10 THE COURT: Okay, thank you.

11 MR. VILLANUEVA: You're welcome.

12 THE COURT: All right. Mr. Hindu, at this
13 point, I am going to explain some of your rights in an
14 American criminal proceeding.

15 So the first thing to know is that you don't
16 have to plead guilty, even if you are guilty. Under the
17 American legal system, it's the prosecution or the
18 government's burden of proving a defendant's guilt beyond
19 a reasonable doubt. And if the government fails to do
20 this, the jury at trial has the duty to find the
21 defendant not guilty even if the defendant is guilty.

22 So what this means is even if you are guilty,
23 you have a choice. It's your choice to decide whether
24 you want to continue with your plea of not guilty or you
25 want to change your plea to guilty, as I am told you wish

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1 to do.

2 You can choose to go to trial in this case by
3 continuing with your plea of not guilty. If you do that,
4 you will make the government meet its burden of proving
5 your guilt beyond a reasonable doubt. And if the
6 government fails, as I said a minute ago, the jury would
7 have the duty to find you not guilty.

8 So you should know that it has happened in
9 American courtrooms, including in this courthouse, that a
10 jury has returned a verdict of not guilty even though
11 everyone else in the courtroom believed the defendant had
12 committed the crime with which he was charged.

13 What the jury was saying in that case, was not
14 that the defendant had not committed the crime, but
15 rather that the government had failed to meet its burden
16 of proving the defendant's guilt beyond a reasonable
17 doubt.

18 Do you understand that?

19 THE DEFENDANT: Yes, I understand.

20 THE COURT: All right. So, for you, it's up to
21 you to decide whether you want to continue with your plea
22 of not guilty or change it to guilty.

23 If you continue with your plea of not guilty,
24 under the Constitution and the laws of the United States,
25 you are entitled to a speedy and public trial by jury

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1 with the assistance of a lawyer on the charges against
2 you that are set forth in the superseding indictment
3 which has been filed with the Court.

4 Do you understand?

5 THE DEFENDANT: Yes, I understand.

6 THE COURT: At a trial, you would be presumed
7 innocent. You would have no obligation to prove that
8 you're innocent. It would be the government's burden to
9 overcome that presumption of innocence and prove you
10 guilty by competent evidence and beyond a reasonable
11 doubt. And if the government failed, the jury would have
12 the obligation to find you not guilty.

13 If you decide to plead guilty, you're giving up
14 your right to have the government satisfy its burden of
15 proving you guilty beyond a reasonable doubt and instead,
16 you'll be admitting your guilt.

17 Were you to persist with your plea of not
18 guilty and go to trial, at the trial witnesses for the
19 government would have to come to court. They would
20 testify in your presence. Your lawyer could cross-
21 examine the witnesses, your lawyer could object to the
22 evidence offered by the government and your lawyer could
23 offer witnesses and other evidence on your behalf.

24 Your lawyer could also compel or subpoena
25 witnesses to come to court and to testify.

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1 Do you understand?

2 THE DEFENDANT: Yes, I understand.

3 THE COURT: All right. If you decide to go
4 ahead with a guilty plea, and I recommend that Judge
5 Block accept your plea and that's what he does, you're
6 giving up these rights. You're giving up your right to a
7 trial, to confront witnesses who would testify against
8 you, to offer evidence on your own behalf, to compel
9 witnesses to come to court and to testify and to raise
10 any other defenses that you may have.

11 Do you understand?

12 THE DEFENDANT: Yes, I understand.

13 THE COURT: At trial, you would have the right
14 to testify on your own behalf if you choose to do so but
15 it would be up to you and you could not be required to
16 testify.

17 Under the Constitution of the United States, a
18 defendant in a criminal case cannot be forced to take the
19 witness stand at a trial and say anything that could be
20 used against him to show that he is guilty of the crime
21 or crimes with which he is charged.

22 So, if you decided at your trial that you
23 didn't want to testify, the judge would tell the jury
24 that they could not hold that fact or that decision
25 against you. This is called exercising your right

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1 against self-incrimination.

2 Do you understand?

3 THE DEFENDANT: Yes, I understand.

4 THE COURT: If you decide to go ahead with your
5 guilty plea, you're going to waive that right. You're
6 going to tell me what it is that you did in order to
7 satisfy myself and Judge Block that you, in fact, are
8 guilty of the charge to which you are pleading guilty.

9 I'm going to have to ask you questions about
10 what you did and you are going to have to answer my
11 questions truthfully.

12 THE DEFENDANT: Of course, yes.

13 THE COURT: And when you answer those
14 questions, it's subject to the oath that you took earlier
15 to tell the truth. So it's not going to be enough for
16 you simply to say that you're guilty. You're going to
17 have to tell me what it is that you did such that you are
18 guilty.

19 Do you understand?

20 THE DEFENDANT: The truth, yes.

21 THE COURT: All right. So if you plead guilty
22 and I recommend that Judge Block accept your plea and
23 that's what he does, you're giving up your constitutional
24 right to a trial and to all the other rights that I have
25 just discussed. There will not be a trial in your case.

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1 If Judge Block accepts your plea, he will simply enter a
2 judgment of guilty on the basis of your plea.

3 Do you understand that?

4 THE DEFENDANT: All right. It's all right,
5 yes. I understand.

6 THE COURT: If after you are sentenced, you or
7 your attorney thinks the Court has not properly followed
8 the law in sentencing you, you can usually appeal your
9 sentence to a higher court. But by pleading guilty, you
10 will not except under very limited circumstances, be able
11 to challenge the judgment of conviction either directly
12 or indirectly.

13 We're going to go over -- sorry, we're going to
14 go over the plea agreement that you have with the
15 government in a few minutes but I want to draw your
16 attention to a limitation in the agreement on your right
17 to appeal.

18 In paragraph 4 of the agreement, it says, "The
19 defendant agrees not to file an appeal or otherwise
20 challenge by petition pursuant to 28 USC Section 2255 or
21 any other provision, the conviction or sentence in the
22 event that the Court imposes a term of imprisonment of
23 188 months or below."

24 So do you understand that limitation on your
25 right to appeal?

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1 Why don't you take a minute and speak with
2 your attorney.

3 MR. VILLANUEVA: One second.

4 THE COURT: Yep.

5 (Counsel and client confer)

6 MR. VILLANUEVA: Thank you, Judge.

7 THE COURT: All right. So I think the last
8 question I asked was do you understand the limitation in
9 the plea agreement on your right to appeal?

10 THE DEFENDANT: Yes, I understand that.

11 THE COURT: All right.

12 THE DEFENDANT: Thank you.

13 THE COURT: All right. So are you willing to
14 give up your right to a trial and all the other rights
15 that I have just discussed?

16 THE DEFENDANT: Yes.

17 THE COURT: All right.

18 THE DEFENDANT: I am going to plead guilty to
19 what I did.

20 THE COURT: Okay. So I am going to explain
21 some more things, ask you some more questions, and then
22 at the end, we'll talk about what your plea is.

23 All right. So there's a document called the
24 plea agreement. I have marked it as Government's Exhibit
25 1. We're going to look at the last page of the original,

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1 which I have up here. In the middle of the last page,
2 which is page 6, it says, "I have read the entire
3 agreement and discussed it with my attorney. I
4 understand all of its terms and I am entering into it
5 knowingly and voluntarily."

6 So was this agreement translated for you from
7 English to Spanish?

8 THE DEFENDANT: Yes.

9 THE COURT: And that sentence or last two
10 sentences that I just read, are those -- I'm going to
11 point to them here in the document, are those statements
12 correct?

13 THE DEFENDANT: Yes, it's correct.

14 THE COURT: I'm going to point, if you look up
15 here, to my copy.

16 Is this your signature in the middle of the
17 page?

18 THE DEFENDANT: Yes, it's my signature.

19 THE COURT: All right. And then Mr.
20 Villanueva, below that is that your signature?

21 MR. VILLANUEVA: Yes, it is, your Honor.

22 THE COURT: All right. And then let me ask Mr.
23 Villanueva, how was this document translated? Was it in
24 writing or was it read orally?

25 MR. VILLANUEVA: Both, your Honor. We provided

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1 Mr. Hindu a translated version of the plea agreement and
2 in addition, on numerous occasions, we have, with the
3 assistance of a Spanish interpreter, we went line by line
4 through the plea agreement.

5 THE COURT: Do you know who the translator was
6 of the written document?

7 MR. VILLANUEVA: Yes. I used two translators,
8 Jay Carlos Hernan (ph.) and Jan Calloway (ph.). So on
9 probably four or five occasions with each of those
10 interpreters, we went through this agreement.

11 THE COURT: All right. And do you know who
12 translated the written document?

13 MR. VILLANUEVA: I believe Mr. Hernan did but I
14 can't be sure because Ms. Calloway also translated
15 documents but I am pretty sure it was Mr. Hernan.

16 THE COURT: All right. Mr. Gilman, up at top,
17 is that your signature?

18 MR. GILMAN: Yes, your Honor.

19 THE COURT: And then I have no idea whose
20 signature that is below.

21 MR. GILMAN: I believe it's our supervisor,
22 United States Attorney Gina M. Parlovecchio.

23 THE COURT: Okay. And what was her role in
24 connection with this case?

25 MR. GILMAN: She is the supervisor to myself

Proceedings

1 and Mr. Robotti. We're the assigned assistants.

2 THE COURT: Okay. All right. Thanks.

3 THE COURT: Mr. Villanueva, were all formal
4 plea offers by the government conveyed to the defendant?

5 MR. VILLANUEVA: Yes, your Honor.

6 THE COURT: So, Mr. Robles, was the entire plea
7 agreement, which is the document that I have marked as
8 Government's Exhibit 1, read to you in Spanish?

9 THE DEFENDANT: This one? Yes, yes.

10 THE COURT: This, yep.

11 THE DEFENDANT: Yes.

12 THE COURT: Did you have any difficulty
13 understanding the document?

14 THE DEFENDANT: Well, no, I was told what I
15 could get, zero to 20 years.

16 THE COURT: All right. We're going to go over
17 that in some more detail in a minute.

18 Did you go over the plea agreement with Mr.
19 Villanueva?

20 THE DEFENDANT: Yes.

21 THE COURT: And do you understand all of the
22 terms of the plea agreement?

23 THE DEFENDANT: What he told me, yes,
24 everything.

25 THE COURT: Let me just understand -- do you

Proceedings

1 understand everything that's in the plea agreement?

2 THE DEFENDANT: Since he explained it all to
3 me, yes, I understand it.

4 THE COURT: All right. Does the plea
5 agreement, which is Government Exhibit 1, accurately
6 represent the entire understanding or agreement that you
7 have entered into with the United States government?

8 THE DEFENDANT: Yes.

9 THE COURT: Has anyone made any promise or
10 assurance to you that's not included in this document to
11 persuade you to accept the plea agreement?

12 THE DEFENDANT: No, no one has forced me.

13 THE COURT: All right. Has anyone threatened
14 you in any way to persuade you to accept the plea
15 agreement?

16 THE DEFENDANT: No.

17 THE COURT: All right. Mr. Villanueva, I think
18 I asked you this before but just to make sure the record
19 is clear, did you read and review Government Exhibit 1
20 with your client?

21 MR. VILLANUEVA: I did, your Honor.

22 THE COURT: And have you -- you did so with the
23 assistance of an interpreter, is that correct?

24 MR. VILLANUEVA: I did.

25 THE COURT: And does Government Exhibit 1

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1 reflect your understanding of the entire agreement that
2 your client has entered into with the government?

3 MR. VILLANUEVA: It does.

4 THE COURT: Mr. Hindu, do you understand that
5 if you fail to comply fully with your agreement with the
6 government, the government will be released from its
7 obligations but you will not be released from your guilty
8 plea?

9 THE DEFENDANT: All right. There's no problem.
10 I accept it.

11 THE COURT: All right.

12 THE DEFENDANT: I am going to plead guilty to
13 what I did.

14 THE COURT: All right. I am going to ask you
15 what you did in a little while. I need to explain a few
16 more things to you before we get to that stage.

17 So we're going to go over the plea agreement
18 and some of the information included in here. So looking
19 at paragraph 1 of Government Exhibit 1, it says that you
20 are going to waive any challenge to venue in this
21 district, which is the Eastern District of New York.

22 Is that correct?

23 THE DEFENDANT: Yes, plead guilty to a lesser
24 included offense including in -- included in Count 2 of
25 the indictment.

Proceedings

1 THE COURT: Okay. So that's the next thing.
2 What it says is that you're going to, as you said, plead
3 guilty to a lesser included offense of Count 2 of the
4 superseding indictment which charges you with a violation
5 of a particular federal statute, 21 USC Section 963.

6 Sp as you alluded to earlier, this count
7 carries the following statutory penalties. The maximum
8 term of imprisonment is 20 years. The minimum term of
9 imprisonment of zero years.

10 So as you said earlier, there's a range from
11 zero to 20 years of what your possible term of
12 imprisonment may be and that's totally up to Judge Block
13 what he is going to do in your case.

14 There's a minimum supervised release term of
15 three years and a maximum supervised release term of
16 life, which would follow any term of imprisonment.

17 Were you to violate a condition of release, you
18 could be sentenced for up to two years and you wouldn't
19 receive any credit for pre-release imprisonment or time
20 previously served on post-release supervision.

21 Do you understand that?

22 THE DEFENDANT: Yes, I undersrtand.

23 THE COURT: All right. If you're placed on
24 supervised release, there may be restrictions on your
25 liberty which may include travel limitations,

Proceedings

1 requirements that you report regularly to a probation
2 officer, prohibitions on carrying certain weapons and
3 other limitations.

4 Do you understand that?

5 THE DEFENDANT: All right.

6 THE COURT: The maximum fine that can be
7 imposed of \$1 million.

8 There's no agreement with regard to restitution
9 but you have to be charged \$100 special assessment.

10 Let me ask, Mr. Villanueva, is your client a
11 citizen of the United States?

12 MR. VILLANUEVA: No, your Honor.

13 THE COURT: Am I missing it? Let me ask the
14 government, you usually --

15 THE DEFENDANT: I have papers but they don't --
16 they don't expire.

17 THE COURT: Usually in these kinds of plea
18 agreements --

19 THE DEFENDANT: Those papers don't expire.

20 THE COURT: -- there's some discussion about
21 removal.

22 (Counsel and client confer)

23 THE COURT: Just wait until Mr. Villanueva is
24 ready.

25 MR. VILLANUEVA: I'm sorry. Yes, I am. I'm

Proceedings

1 sorry.

2 THE COURT: That's fine.

3 MR. VILLANUEVA: I was distracted. I am sorry.

4 THE COURT: No, no. Did you have enough time
5 to talk to your client?

6 MR. VILLANUEVA: Yes, I did.

7 THE COURT: Okay. I was asking the government,
8 this is obviously the plea agreement and the terms are
9 completely between you and the defendant but usually, I
10 see language related to removal. So I just want to make
11 sure it wasn't an oversight, that it's intentionally not
12 included in this document.

13 MR. GILMAN: I believe it is an oversight, your
14 Honor, that were (indiscernible).
15 (Counsel and client confer)

16 MR. GILMAN: May I see the copy the Court has?
17 I apologize.

18 THE COURT: Sure.
19 (Counsel and client confer)

20 MR. GILMAN: Okay. Your Honor, we discussed
21 the source of confusion. I apologize. I handed the
22 incorrect copy to the Court --

23 THE COURT: Okay.

24 MR. GILMAN: -- of the plea agreement. I just
25 confirmed with Mr. Villanueva, that the agreement I am

Proceedings

1 holding now is the correct agreement and so what we're
2 going to do is now execute this agreement --

3 THE COURT: Okay.

4 MR. GILMAN: -- and ask that the Court -- the
5 Government Exhibit 1 be replaced with --

6 THE COURT: I think we'll mark the new one as
7 Government's Exhibit 2 and the record will show that the
8 2 is the one that we're dealing with.

9 MR. GILMAN: That sounds fine, your Honor.
10 Thank you.

11 THE COURT: Sure -- just to make sure.

12 MR. GILMAN: I apologize for the confusion.

13 THE COURT: It's okay.

14 (Pause)

15 MR. GILMAN: Thank you very much.

16 (Counsel and client confer)

17 THE COURT: Mr. Hindu, there was some confusion
18 as to the right copy of the document. So I have a new
19 copy of the plea agreement from the government which I
20 have marked as Government's Exhibit 2. I'm going to ask
21 the government to hold onto Government's Exhibit 1, just
22 so there's no confusion in the record.

23 MR. GILMAN: Yes, your Honor.

24 THE COURT: Okay. Let me ask Mr. Villanueva,
25 was this complete document, Government's Exhibit 2,

Proceedings

1 translated from English to Spanish?

2 MR. VILLANUEVA: Yes, it was, your Honor, and I
3 have confirmed that by checking both my Spanish-
4 translated copy of the plea agreement, as well as my
5 English version against a copy that your Honor designated
6 as a court exhibit.

7 THE COURT: All right. So, Mr. -- thank you.

8 Mr. Hindu, I am going to have to go back and
9 ask you a couple of the questions that I had asked before
10 but this time it's in reference to this version of the
11 document which I am calling Government's Exhibit 2.

12 All right. So the document that's called
13 Government's Exhibit 2 on page 7 of that document, it
14 says, "I have read the entire agreement and discussed it
15 with my attorney. I understand all of its terms and I
16 entering into it knowingly and voluntarily."

17 Are those statements correct?

18 THE DEFENDANT: Yes.

19 THE COURT: All right. And below -- I am going
20 to hold up my copy which is Government's Exhibit 2, here
21 right below those statements, is that your signature?

22 THE DEFENDANT: Yes, Miss.

23 THE COURT: And then Mr. Villanueva, below that
24 is your signature?

25 MR. VILLANUEVA: Yes, it is.

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1 THE COURT: All right. And just for the
2 record, do you remember -- can you repeat the names of
3 the two individuals who you think translated the
4 document?

5 MR. VILLANUEVA: Yes, Ms. Jan Calloway and Mr.
6 Jay Carlos Hernan.

7 THE COURT: All right. Thank you.

8 MR. VILLANUEVA: Yes, your Honor.

9 THE COURT: And Mr. Gilman, the signature up at
10 the top, is that your signature?

11 MR. GILMAN: Yes, your Honor.

12 THE COURT: All right. And then below that,
13 your supervisor, can you tell me her name?

14 MR. GILMAN: That's correct, it's Miss Gina M.
15 Parlovecchio, Assistant United States Attorney.

16 THE COURT: All right. Thank you.

17 And Mr. Hindu, did you receive a translated
18 copy of the plea agreement? So a copy of that was
19 written in Spanish?

20 THE DEFENDANT: Yes.

21 THE COURT: And did you read it?

22 THE DEFENDANT: Yes, I read it.

23 THE COURT: Did you understand it?

24 THE DEFENDANT: Yes, I understand.

25 THE COURT: All right. Did you go over it with

Proceedings

1 your lawyer?

2 THE DEFENDANT: Yes, we spoke about it, the two
3 of us. Yes, we did.

4 THE COURT: All right. And do you understand
5 all of the terms that are in the plea agreement that's
6 marked as Government's Exhibit 2?

7 THE DEFENDANT: Yes, I understand exactly.

8 THE COURT: All right. And does this document,
9 Government's Exhibit 2, accurately represent the entire
10 understanding or agreement that you have with the
11 government?

12 THE DEFENDANT: Number 2, yes.

13 THE COURT: Number 2, yeah.

14 THE DEFENDANT: Zero to 20, that's what it
15 says.

16 THE COURT: Yes, we're going to go over that in
17 some more details in a minute. All right.

18 Did anyone make any promise or assurance to you
19 that not's included in Government's Exhibit 2 in order to
20 persuade you to accept the agreement with the government?

21 THE DEFENDANT: No.

22 THE COURT: All right. Has anyone --

23 THE DEFENDANT: I've never --

24 THE COURT: I'm sorry.

25 THE DEFENDANT: -- been told anything.

Proceedings

1 THE COURT: Okay. Meaning you have never been
2 promised anything, is that correct?

3 THE DEFENDANT: No, I haven't been promised
4 anything.

5 THE COURT: All right. Has anyone threatened
6 you in any way to persuade you to accept the plea
7 agreement which is Government's Exhibit 2?

8 THE DEFENDANT: No, not that either.

9 THE COURT: All right. Have you read and
10 reviewed -- sorry, this is a question for Mr. Villanueva.
11 Have you read and reviewed with your client the written
12 plea agreement, Government's Exhibit 2?

13 MR. VILLANUEVA: Yes, your Honor.

14 THE COURT: And does it reflect your entire
15 understanding of the agreement that your client has
16 entered into with the government?

17 MR. VILLANUEVA: Yes, it does.

18 THE COURT: All right. Thanks.

19 All right, Mr. Hindu, I am going to repeat a
20 couple of other things that I said earlier but I want to
21 make sure you understand them in connection with
22 Government's Exhibit 2.

23 If you fail to comply with your agreement with
24 the government, the government will be released from its
25 obligations but you will not be released from your guilty

Proceedings

1 plea.

2 Do you understand that?

3 THE DEFENDANT: All right.

4 THE COURT: And then also --

5 THE DEFENDANT: I understand.

6 THE COURT: Thank you. And also earlier, I
7 said if after you are sentenced, you or your attorney
8 thinks that the judge has not properly followed the law
9 in sentencing you, you can usually appeal your sentence
10 to a higher court but by pleading guilty, you will not,
11 except under very limited circumstances, be able to
12 challenge your judgment of conviction either directly or
13 indirectly.

14 And then I had noted that there is an
15 additional limitation on your right to appeal included in
16 the plea agreement. I'm just trying -- okay. And
17 that's in paragraph 4 which is on page 4. I am just
18 going to read the first sentence of that paragraph.
19 "The defendant agrees not to file an appeal or otherwise
20 challenge by petition pursuant to 28 USC Section 2255 or
21 any other provision, the conviction or sentence in the
22 event that the Court imposes a term of imprisonment of
23 188 months or below."

24 Do you understand that limitation?

25 THE DEFENDANT: Yes.

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1 THE COURT: Okay. So I think we're back to
2 where we left off in terms of talking about the plea
3 agreement.

4 So as we had talked about earlier, the plea
5 agreement provides that you're going to waive any
6 challenge to venue in the Eastern District of New York.

7 Is that correct?

8 THE DEFENDANT: What was that? I didn't
9 understand the question.

10 THE COURT: All right. So I am looking at the
11 plea agreement --

12 THE DEFENDANT: Sorry.

13 THE COURT: I'm looking at the plea agreement,
14 Government's Exhibit 2, paragraph 1 on the first page.
15 On the first part of the first sentence provides that you
16 are going to waive or you are waiving any challenge to
17 venue in the Eastern District of New York.

18 THE DEFENDANT: Yes.

19 THE COURT: All right. It's also proposed that
20 you're going to plead guilty to a lesser included offense
21 of Count 2 of the superseding indictment which charges
22 you with a violation of 21 USC Section 963.

23 So as you had said earlier, the maximum term of
24 imprisonment is 20 years and the minimum term of
25 imprisonment is zero years. The minimum supervised

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1 release term is three years. The maximum supervised
2 release term is life. It would follow any term of
3 imprisonment. Were you to violate a condition of
4 release, you could be sentenced for up to two years
5 without credit for pre-release imprisonment or time
6 previously served on post-release supervision.

7 If you're placed on supervised release, there
8 may be many restrictions on your liberty including travel
9 limitations and requirements that you report regularly to
10 a probation officer.

11 Do you understand?

12 THE DEFENDANT: Yes, I understand.

13 THE COURT: The maximum fine that can be
14 imposed is \$1 million. There's no agreement for
15 restitution and there's a \$100 special assessment that
16 must be imposed.

17 Other penalties include removal from the United
18 States which is described in paragraph 6 of the agreement
19 which I am going to go over now.

20 So I understand from our earlier discussion
21 that you are not a United States citizen. If you are not
22 a United States citizen, pleading guilty may have serious
23 consequences with regard to your immigration status.
24 Under federal law, several offenses including the one to
25 which it's proposed you're going to plead guilty, are

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1 what we call removable offenses.

2 In fact, what is proposed you're going to plead
3 guilty to, which is conspiracy to distribute marijuana,
4 the presumption is that you're going to be removed. So
5 we say removal is presumptively mandatory but immigration
6 matters such as removal are the subject of a separate
7 case or a separate proceeding.

8 So nobody here, not your lawyer, not me, not
9 the government's lawyer or the other judge on the case,
10 can tell you with certainty what the effect of your
11 conviction may be on your immigration status.

12 Nonetheless, what this agreement says is that
13 you affirm that you want to plead guilty regardless of
14 any immigration consequences that your plea may have,
15 even if the consequence is your automatic removal from
16 the United States.

17 Do you understand these immigration issues?

18 THE DEFENDANT: Yes, I do understand.

19 THE COURT: Did you go over them with your
20 lawyer?

21 THE DEFENDANT: Yes, I did speak about it with
22 the lawyer.

23 THE COURT: And is it correct that you affirm
24 that you want to plead guilty regardless of any
25 immigration consequences that your plea may have, even if

Proceedings

1 your consequence -- even if the consequence is your
2 automatic removal from the United States?

3 THE DEFENDANT: Well, yes, what else can I do?
4 I have to tell the truth about what I did.

5 THE COURT: Okay. You have options which your
6 lawyer -- well, I will ask him but I believe your lawyer
7 has gone over with you, including you have the option of
8 going to trial. You know, everything I was explaining
9 earlier, you have the right to continue --

10 THE DEFENDANT: Yes.

11 THE COURT: -- with your not guilty plea, you
12 can go to trial, see what the jury decides. Or you can
13 change your plea from not guilty to guilty. That was
14 what I was hoping to explain to you earlier, right, when
15 I went over all the rights that you have. You know, you
16 can have a trial. You can do certain things at a trial.
17 You would have a lawyer at the trial. I am not going to
18 go over them all again, unless you want me to but I want
19 to be clear --

20 THE DEFENDANT: No, no, it's all right.

21 THE COURT: -- that you understand that you
22 have a choice. It's up to you to decide if you want to
23 stick with your plea of not guilty or change it to
24 guilty.

25 THE DEFENDANT: No, I am going to plead guilty.

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1 THE COURT: All right. And you want to do
2 that? Is it correct, even if the consequence is your
3 removal from the United States. Is that correct?

4 THE DEFENDANT: Well, yes, what else can I do
5 now? I can -- I made this mistake.

6 THE COURT: Okay. Let me -- my role here is to
7 make sure that you understand. I understand rhetorically
8 that --

9 THE DEFENDANT: Yes, I understand this.

10 THE COURT: -- one can say what can I do but I
11 want to make sure you understand that you actually have a
12 choice. You may believe --

13 THE DEFENDANT: All right. No, I understand.

14 THE COURT: -- one choice is the right choice.
15 Hang on, let me finish and then you can speak. You may
16 decide one choice is the right one for you. I have no
17 opinion about that. That's completely your decision.
18 You are making it in consultation with your lawyer.

19 But you have a choice. You do not have to
20 plead guilty. If you want to plead guilty, you can do
21 that. You don't have to. You have a choice. It's for
22 me, it's not just a rhetorical question, it's an actual
23 question. Do you want to do this, for example, stick
24 with your not guilty plea or do you want to do the other
25 thing, change your plea to guilty?

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1 All right, so --

2 THE DEFENDANT: No, I will plead guilty.

3 THE COURT: All right, And do you want to do
4 that even though you are very, very, very, likely to be
5 deported from the United States?

6 THE DEFENDANT: It's all right. Well, you
7 know, that's what you get sometimes for doing things here
8 and there.

9 THE COURT: All right. Well, that's a
10 conversation you're going to have with the other judge
11 who is the one who decides what the consequences are and
12 then in the immigration proceeding, you'll have that
13 discussion.

14 All right. Then let's go over other parts of
15 this plea agreement. Let me ask you actually one other
16 question.

17 Do you understand that there is no parole in
18 the federal system? So, that if the judge gives you a
19 term of imprisonment, you're going to spend that time in
20 prison.

21 THE DEFENDANT: Yes, I know that's the case.
22 Yes.

23 THE COURT: All right. So let me explain a
24 little bit about how this sentencing process works.
25 Judge Block, who is going to be the sentencing judge in

Proceedings

1 your case, does not have complete discretion to impose a
2 sentence outside of the minimum and maximum sentences
3 that are set forth in the statute, which as we talked
4 about are zero to 20 years.

5 Do you understand that? Do you understand?

6 THE DEFENDANT: Yes.

7 THE COURT: As a first step in the sentencing
8 process, Judge Block will consider what are called
9 advisory sentencing guidelines that have been issued by
10 the United States Sentencing Commission. Their purpose
11 to help him decide what's a reasonable sentence in a
12 criminal case.

13 In the second step, he will consider whether
14 there are any factors present that would allow him to go
15 above or below the advisory sentencing guidelines.

16 Now the third step, he considers a list of
17 factors that are set forth in a particular federal
18 statute which is 18 USC Section 3553(a).

19 For each of those steps, it takes into account
20 the particular facts of your case and your situation. It
21 might be that the judge decides to impose a guideline
22 sentence. It might be that the judge decides to impose
23 what is called a non-guideline sentence.

24 But until you get to the district judge and
25 have the conversation with him, so the judge talks to

Proceedings

1 you, talks to your lawyer, talks to the government's
2 lawyer, and reads the materials that are submitted,
3 nobody can know what your sentence will be. So nobody
4 here can tell you what your sentence will be until you
5 get to that -- well, let me say that again. No one here
6 could tell you what your sentence is going to be, only
7 the district judge can tell you that and he could only
8 tell you that after he's going through this multi-step
9 process.

10 Nonetheless, the lawyers can make an estimate
11 as to what the sentencing guidelines are likely to be in
12 your case. These are going to be -- their estimate is
13 going to be based solely on the information available to
14 them. So they may be missing information. There might
15 be information that develops between now and the time of
16 sentencing. So that basically, they're giving you their
17 best guess.

18 All right. Let me just take a moment. I know
19 you had a conflicting appointment and Ms. Quinlan has let
20 them know, right?

21 MR. VILLANUEVA: Yes. Thank you, appreciate
22 it.

23 THE COURT: Okay, thanks.

24 All right. So for the government, what's your
25 estimate as to the guidelines calculation for Mr. Hindu?

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1 MR. GILMAN: Yes, your Honor. The government
2 has included the estimate guidelines calculation in the
3 agreement. The government believes that the adjusted
4 offense level that would be applied to the defendant is
5 33, which carries with it, an advisory guidelines range
6 of imprisonment of 135 to 168 months. So assuming the
7 defendant falls within criminal history category one.

8 THE COURT: Okay. So I am going to interrupt
9 you or add to that. So the copy that I have --

10 MR. GILMAN: Yes.

11 THE COURT: -- has the old date on it.

12 MR. GILMAN: Okay.

13 THE COURT: May -- is that right? Is that what
14 you have?

15 MR. GILMAN: The plea by date is the prior
16 proceeding, your Honor.

17 THE COURT: Yes, that's right, there was
18 another hearing, right?

19 MR. GILMAN: That's right. If we could just --

20 THE COURT: Yep, here. We'll give you our
21 copy. If you can change it to presumably today's date.
22 Mr. Villanueva will give you a chance to look at that and
23 explain that to your client.

24 MR. VILLANUEVA: Yes.

25 THE COURT: If he's in agreement, everybody can

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1 initial it.

2 (Counsel and client confer)

3 THE COURT: All right. Are you ready?

4 MR. VILLANUEVA: Yes. Yes, we are.

5 MR. GILMAN: Yes.

6 THE COURT: Okay. So a couple of points.

7 Let's first talk about the document. Government's
8 Exhibit 2 has had a date correction in it. And in
9 paragraph 2, where it said May 11th, that's been changed
10 to September 14th, which is today's date and it's been
11 initialed.

12 So first let me ask Mr. Gilman, are those your
13 initials I'm pointing to?

14 MR. GILMAN: Yes, your Honor.

15 THE COURT: All right. And then Mr. Hindu, are
16 you initials over here?

17 THE DEFENDANT: Yes, Miss. Yes, Ma'am.

18 THE COURT: And then, Mr. Villanueva, are your
19 initials there?

20 MR. VILLANUEVA: Yes, your Honor.

21 THE COURT: Mr. Villanueva, did you have a
22 sufficient opportunity to review with your client the
23 date change?

24 MR. VILLANUEVA: Yes, I have.

25 THE COURT: And do you believe he understands

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1 it?

2 MR. VILLANUEVA: Yes, he does.

3 THE COURT: All right. And then Mr. Hindu, do
4 you agree that the date change that's been made for May
5 11th to September 14th in paragraph 2 of the plea
6 agreement?

7 THE DEFENDANT: Yes.

8 THE COURT: All right. And are -- did you have
9 a sufficient opportunity to review that date change with
10 your attorney?

11 THE DEFENDANT: Just now, we were looking at
12 it.

13 THE COURT: All right.

14 THE DEFENDANT: Yes.

15 THE COURT: Did you have enough time or do you
16 need more time to talk with him about it?

17 THE DEFENDANT: No, it's all right. Everything
18 is fine. Thank you.

19 THE COURT: Okay. So more broadly, paragraph 2
20 outlines the government's position with regard to the
21 sentencing guidelines.

22 Do you understand everything in paragraph 2?

23 THE DEFENDANT: Yes, I do understand. Yes.

24 THE COURT: All right. And I am going to point
25 to you that the last sentence of paragraph 2 says that

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1 "The defendant agrees that his guideline range should be
2 calculated based on a drug type and quantity of 5,530
3 kilograms of marijuana and waives any right to a Fatico
4 hearing or a jury trial on such issue."

5 Is that a correct statement?

6 THE DEFENDANT: The 5,000 some-odd kilos of
7 marijuana is a lie.

8 THE COURT: Okay. Hold on one moment.

9 (Court and clerk confer)

10 THE COURT: All right. We're going to give you
11 a chance to talk for a second.

12 (Counsel and client confer)

13 THE COURT: All right. Hold on a second.

14 (Counsel and client confer)

15 MR. VILLANUEVA: We're ready to go forward.
16 Thank you, your Honor.

17 THE COURT: All right. So just to recap, the
18 statement that's made in paragraph 2 on page 3 of the
19 plea agreement which is Government's Exhibit 2 is, "The
20 defendant agrees that his guideline range should be
21 calculated based on a drug type and quantity of 5,530
22 kilograms of marijuana and waives any right to a Fatico
23 hearing or a jury trial on such issue."

24 So the first question for Mr. Hindu, do you
25 understand that statement?

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1 THE DEFENDANT: Yes, I understand it perfectly
2 well but the thing is that the only thing I did in regard
3 to this is that somebody in Mexico put me in contact and
4 I conspired with this person.

5 THE COURT: Uh-hum.

6 THE DEFENDANT: I had a hotel in Puerto
7 Penasco, Sonora. This kid -- this guy, he just sent --
8 one time he sent these blonde guys, these Americans with
9 cars and he said he could give me some money but that I
10 should let him know every time the cars left Mexico for
11 Phoenix. And that was my job how I cooperated with this
12 person. But I was never paid any money because
13 supposedly the cars never arrived.

14 MR. VILLANUEVA: Your Honor, if I may? The
15 issue was whether or not Mr. Robles is aware of 5,000
16 kilos of marijuana. Mr. Robles' knowledge is the
17 knowledge contained within the cars that he was
18 contracted or that he agreed to conspire with and I think
19 the government is going to indicate that the entire
20 conspiracy was 5,530 kilos, which is the issue.

21 MR. GILMAN: That's correct, your Honor. As we
22 expect the defendant to such a -- plead to when he gets
23 to his specific allocution, that he was involved in this
24 conspiracy and that he knew it was drugs. And the total
25 amount of drugs that the government attributes to the

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1 defendant is this 5,000 and change number, which is what
2 is cited in the plea, which the defendant is agreeing is
3 the appropriate amount of drugs that were seized as a
4 result of the conspiracy.

5 THE COURT: Okay. But still, there's a lot
6 information that goes into the calculation of the
7 guideline range for your case and I've only gone over an
8 outline of what those issues are.

9 You've heard the government's position and I
10 haven't yet asked your lawyer. It was really going with
11 the government's position right now, then we'll ask Mr.
12 Villanueva what he thinks but as part of your agreement
13 with the government, you are agreeing that when the judge
14 calculates this guidelines range, the facts that he
15 should consider include that the drug was marijuana and
16 that the quantity of drugs involved in the conspiracy was
17 5,530 kilograms of marijuana.

18 And you're waiving certain rights that you have
19 with regard to the question of what drugs were involved,
20 and how much of that drug was involved. So you're
21 agreeing that when the judge thinks about what your
22 sentence should be, both in context of the guidelines and
23 the other things that I told you he had to consider, that
24 he is going to factor in that the drugs are marijuana and
25 that this was the quantity of marijuana.

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1 Again, it's up to you to decide, do you want to
2 agree.

3 THE DEFENDANT: I agree with respect to the
4 cars -- with respect to the cars that I cooperated in
5 sending to the people. But how can I take on all of that
6 stuff?

7 MR. VILLANUEVA: Your Honor?

8 THE DEFENDANT: That's what I don't understand.

9 MR. VILLANUEVA: And it's a legitimate --

10 THE COURT: I am not taking any view. This
11 question is --

12 MR. VILLANUEVA: And it's --

13 THE COURT: -- whether -- for me, right now, is
14 whether your client fully understands the plea agreement.
15 Obviously, Judge Block can take into account all these
16 factors, work with the guidelines, upward or down, all of
17 these things, you know? There's a lot more thinking and
18 thought that's going to go into a sentence if your client
19 decides he wants to plead guilty.

20 But he's doing it pursuant to this agreement
21 and so far, I think we're at -- at best, an ambivalent
22 point as to whether he understands what this is about.

23 MR. VILLANUEVA: It is, your Honor, and as long
24 as -- and I believe my client understands this. The
25 entire conspiracy is the 5,000.

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1 THE COURT: Right.

2 MR. VILLANUEVA: And it's a long conspiracy.

3 THE COURT: Very long.

4 MR. VILLANUEVA: Right. So Mr. Hindu's
5 participation is very discrete and there's only a
6 snapshot of that. Mr. Hindu's conceptual issue is he has
7 trouble understanding that the entire conspiracy is 5,000
8 but my role or my participation of these cars, which he
9 is prepared to allocute to --

10 THE COURT: I think his confusion is pretty
11 clear but right now, the agreement is as it says, on the
12 drug type and the weight or quantity. And so I don't
13 believe he is making this agreement, whether if he
14 understood it more clearly, he would make this agreement
15 but it's entirely possible.

16 So do you want to talk him --

17 MR. VILLANUEVA: Yes, I do.

18 THE COURT: -- a little bit more now and --

19 MR. VILLANUEVA: I would like to.

20 THE COURT: Do you want to -- how long do you
21 think you need to talk with him about it?

22 MR. VILLANUEVA: This is something we've talked
23 about before, so I am not sure I need much time.

24 THE COURT: Okay.

25 MR. VILLANUEVA: But whatever is -- if you have

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1 another matter, I can go in the back.

2 THE COURT: Yeah, that's what I was wondering.

3 MR. VILLANUEVA: I can go in the back.

4 THE COURT: For the marshals, we're going to
5 just take a break. We'll do a second call. We'll pick
6 it up. We'll do the other conference and come back.

7 All right. So, Mr. Hindu, we're going to take
8 a break, give you a chance to talk to your lawyer. I'm
9 going to talk to some other lawyers on a different case
10 and then we're going to bring you back out and see what
11 you want to do.

12 MR. VILLANUEVA: Can I leave my stuff here?

13 THE COURT: Yes, yes, sure.

14 MR. VILLANUEVA: Okay. Thank you.

15 (Recess from 12:37 p.m, until 2:13 p.m.)

16 THE CLERK: Second call for case number 15-cr-
17 208, United States v. John Doe.

18 Spanish interpreter, can you please state your
19 name for the record?

20 THE INTERPRETER: Maristela Verastegui,
21 previously sworn.

22 (INTERPRETER PREVIOUSLY SWORN)

23 THE CLERK: Thank you. Counsel, can you state
24 your name for the record.

25 MR. GILMAN: Good afternoon, your Honor.

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1 Andrew Gilman for the United States.

2 THE COURT: Good afternoon again.

3 MR. VILLANUEVA: And Gary Villanueva for Mr.
4 Hindu.

5 Good afternoon, Judge.

6 THE COURT: Good afternoon.

7 All right, so Mr. Hindu, we had a break. Let
8 me just check in. How are you feeling?

9 THE DEFENDANT: A bit -- the pain is getting a
10 bit worse, but --

11 THE COURT: Is that the pain in your arm?

12 THE DEFENDANT: The arm and my back.

13 THE COURT: Your back and your hip. Is there
14 anything -- is it so bad that it would interfere with
15 your ability to proceed here today?

16 THE DEFENDANT: No, no, I don't think so, no.

17 THE COURT: All right. So we took a break for
18 you to have an opportunity to speak with your attorney
19 about the sentence in paragraph 2 of your plea agreement
20 which is marked as Government's Exhibit 2.

21 And the sentence that was giving cause for
22 concern is as follows: "The defendant agrees that his
23 guideline range should be calculated based on a drug type
24 and quantity of 5,530 kilograms of marijuana and waives
25 any right to a Fatigo hearing or a jury trial on such

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1 issue."

2 And so I had asked you a couple of questions
3 about whether you had read that or had it read to you, if
4 you understood it, if you had talked to your lawyer about
5 it and if you were in agreement. So let me ask those
6 questions.

7 Did you read that sentence?

8 THE DEFENDANT: Yeah, I -- I agree with the
9 statement, I just was seeking to clarify that I wasn't
10 personally involved all of that amount of drugs and that
11 my participation is what I had mentioned but I know it's
12 a conspiracy and that that's -- it was several people,
13 not just me.

14 THE COURT: Okay. So did you have enough time
15 to talk to your lawyer about that sentence?

16 THE DEFENDANT: Yes, that's what we were
17 discussing previously.

18 THE COURT: All right. So are you in agreement
19 with that sentence?

20 THE DEFENDANT: Yes, yes, I am.

21 THE COURT: Okay. So let me just ask your
22 lawyer what's your -- is your estimate what the
23 government estimated with regard to the guidelines or do
24 you think they should be something other than what Mr.
25 Gilman said.

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1 MR. VILLANUEVA: I think the guideline estimate
2 is accurate. However, there are significant other
3 sentencing factors that we believe will outweigh the
4 advisory guidelines --

5 THE COURT: Okay.

6 MR. VILLANUEVA: -- including my client's
7 health, his age, his 40 years of working in a legitimate,
8 tax-paying position. I think those are factors that I
9 think will also be relevant to sentencing.

10 THE COURT: All right. So, Mr. Hindu, just so
11 you understand, we're going through this plea process to
12 create the record, if you decide to go ahead with your
13 change of plea from not guilty to guilty. But the
14 district judge, Judge Block, is the one who is going to
15 make the decision about your sentence and there's going
16 to be a significant opportunity for you and your lawyer
17 and the government to state and provide in writing if you
18 like, your respective positions with regard to the
19 sentence to the district judge.

20 So what Mr. Villanueva said is really just a
21 very brief overview of what he'll develop when you get to
22 the sentencing date.

23 All right. Do you understand that the estimate
24 given by the government is not binding on the government,
25 the probation department or the Court? That was just the

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1 government's current best estimate.

2 THE DEFENDANT: Yes, that's right.

3 THE COURT: And --

4 THE DEFENDANT: You're referring to the points,
5 right?

6 THE COURT: Yes. And your ultimate sentence
7 could turn out to be different from any estimate that the
8 government lawyer said, or that your lawyer has given you
9 or that you may have developed yourself.

10 Do you understand that?

11 THE DEFENDANT: Yes, right.

12 THE COURT: All right. So it could turn out
13 that because of statutory sentencing factors, the
14 district judge could impose a sentence that's higher or
15 lower than the sentencing guidelines.

16 But do you understand, most importantly, that
17 your sentence could be higher than the one recommended by
18 the advisory sentencing guidelines?

19 THE DEFENDANT: Yes, yes, understood.

20 THE COURT: All right. And if turned out that
21 your sentence was higher than that provided by the
22 guidelines, you would not be permitted to withdraw your
23 guilty plea simply because no one could tell you in
24 advance what your sentence would be.

25 Do you understand that?

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1 THE DEFENDANT: Yes, I understand.

2 THE COURT: All right. And what's being
3 proposed here is that you're going to plead guilty to a
4 felony. And to the extent that you may enjoy certain
5 civil rights in the United States, which you may or may
6 not have because you're not a citizen, a felony
7 conviction could limit some of those rights.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: All right. Let's just look a
11 little bit more at the document that's been marked as
12 Government's Exhibit 2. So we talked about paragraph 1.
13 We've gone over paragraph 2 when we were talking about
14 the possible sentencing guidelines.

15 Have you read paragraphs 3, 4, and 5?

16 THE DEFENDANT: Yes, the ones -- yes.

17 THE COURT: Do you understand them?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: And did you have a sufficient
20 opportunity to review them with your attorney?

21 THE DEFENDANT: Yes.

22 THE COURT: All right. And are you in
23 agreement with those paragraphs?

24 THE DEFENDANT: Yes.

25 THE COURT: All right. Paragraph 6 is the

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1 paragraph about your likely removal from the United
2 States.

3 Did you read this paragraph?

4 THE DEFENDANT: Yes, I did, your Honor.

5 THE COURT: Did you go over it with your
6 lawyer?

7 THE DEFENDANT: Yes, we were discussing that
8 that was a possibility that I would have to face because
9 of what I did.

10 THE COURT: Okay. All right. And you
11 understand everything in that paragraph, is that right?

12 THE DEFENDANT: Yes.

13 THE COURT: Okay. All right. And then the
14 last two paragraphs in this agreement are paragraph 7 and
15 paragraph 8.

16 Did you read those paragraphs?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you understand them?

19 THE DEFENDANT: Yes, I did.

20 THE COURT: Did you have a sufficient
21 opportunity to review them with your attorney?

22 THE DEFENDANT: Yes, my lawyer did.

23 THE COURT: All right. And do you -- are you
24 in agreement with what those paragraphs say?

25 THE DEFENDANT: Yes.

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1 THE COURT: Okay. All right. Just to recap,
2 document that's been marked as Government's Exhibit 2 is
3 the plea agreement.

4 Do you understand everything in this plea
5 agreement?

6 THE DEFENDANT: Yes.

7 THE COURT: Okay. I'm making sure I've covered
8 everything.

9 All right. So we talked a little bit earlier
10 about me asking you what it is that you did such that you
11 are, in fact, guilty. And so I am going to first ask the
12 government some questions. Then I am going to come back
13 and ask you some questions and see if you want to enter
14 your plea of guilty.

15 All right. So for the government, is the
16 government prepared to prove at trial all of the elements
17 of the count against the defendant?

18 MR. GILMAN: Yes, your Honor.

19 THE COURT: And are those elements that are
20 relevant to this plea set forth in the government's
21 letter of May 24th or your element sheet rather, not
22 letter?

23 MR. GILMAN: That's correct, your Honor.

24 THE COURT: All right. And then Mr.
25 Villanueva, do you have a copy of the element sheet?

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1 MR. VILLANUEVA: I do, your Honor.

2 THE COURT: Do you agree that it accurately
3 states the elements of the -- actually, hold on one
4 second. Let me ask you something different.

5 Okay. I may have -- this element sheet is for
6 the offense of the international and marijuana
7 distribution conspiracy. The plea is going to be the
8 lesser included offense, right?

9 MR. GILMAN: To -- I believe that what changes,
10 your Honor, the elements are the same.

11 THE COURT: Uh-hum.

12 MR. GILMAN: But the lesser included offense is
13 that the offense to which he is pleading does not include
14 a mandatory minimum sentence as was charged in the
15 indictment.

16 THE COURT: All right. So what's the lesser
17 included -- what's different between --

18 MR. GILMAN: There's the weight --

19 THE COURT: Okay.

20 MR. GILMAN: -- of drug is not specified and
21 thus, there's no mandatory minimum --

22 THE COURT: Right.

23 MR. GILMAN: -- in this plea agreement.

24 THE COURT: Okay, so let me ask the question.
25 So, Mr. Villanueva, do you have a copy of the elements

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1 sheet?

2 MR. VILLANUEVA: I do, your Honor.

3 THE COURT: All right. And do you agree that
4 the elements as they're listed here they're -- I guess
5 these are the elements actually for the lesser included
6 offense, not -- it's just the text is a little confusing.

7 So it refers to Count 2. Count 2 is the
8 offense, right, the international marijuana distribution
9 conspiracy and then what's being proposed he plead to is
10 the lesser included offense which is the elements as
11 they're listed on the elements sheet.

12 Do I have that correct?

13 MR. VILLANUEVA: That's correct.

14 THE COURT: All right. So, Mr. Villanueva,
15 have you gone over the elements for the lesser included
16 offense as they're listed on the elements sheet with your
17 client?

18 MR. VILLANUEVA: I have, your Honor.

19 THE COURT: All right. And do you believe he
20 understands them?

21 MR. VILLANUEVA: I believe so, yes.

22 THE COURT: Okay. All right. So for the
23 government, is the government prepared to prove at trial
24 all the elements of the counts against the defendant and
25 if your answer is yes, then what would the evidence be

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1 that the government would offer at trial to show the
2 defendant's guilt?

3 MR. GILMAN: The evidence is yes, your Honor,
4 the government is prepared to provide evidence that would
5 allow it to meet its burden at trial. The evidence
6 consists of reports concerning the seized drugs,
7 testimony from law enforcement officers, recordings,
8 potential wire interceptions --

9 THE COURT: Potential?

10 MR. GILMAN: Wire interceptions, your Honor.
11 And perhaps additional evidence, as well.

12 THE COURT: Okay. All right. Mr. Villanueva,
13 do you agree the government would be able to prove the
14 case against your client based on the evidence just
15 described by counsel?

16 MR. VILLANUEVA: I do, your Honor.

17 THE COURT: Okay. So, Mr. Villanueva, do you
18 know of any reason why Mr. Hindu should not plead guilty?

19 MR. VILLANUEVA: I do not, your Honor.

20 THE COURT: Are you aware of any viable legal
21 defense to the charges against him?

22 MR. VILLANUEVA: No, your Honor.

23 THE COURT: All right. And in your
24 professional opinion, is this plea agreement and his
25 guilty plea at this time, in his best interest?

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1 MR. VILLANUEVA: Yes, it is.

2 THE COURT: Okay. All right.

3 So, Mr. Hindu, do you need an opportunity to
4 speak with your attorney before I ask you about how you
5 plead?

6 THE DEFENDANT: No. Everything is fine, I am
7 ready.

8 THE COURT: All right. So with regard to the
9 lesser included offense of Count 2 to the superseding
10 indictment, how do you plead, guilty or not guilty?

11 THE DEFENDANT: I -- you know, I am -- I am
12 guilty.

13 THE COURT: All right. And as we've touched on
14 a couple of times here, I'm going to ask you what it is
15 that you did such that you are, in fact, guilty of the
16 lesser included offense of Count 2, the international
17 marijuana distribution conspiracy.

18 THE DEFENDANT: Okay. Yeah, I -- firstly, I
19 would like to apologize to everybody because, yes, I did
20 commit this very, very big mistake. There was this --
21 this person that I had conversations with, I owned a
22 hotel in Mexico. He was sending Americans there in cars.
23 There, people would load the cars. They would take it
24 out of my establishment, loaded with marijuana.

25 So my task, what to call -- was to call this

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1 person at the time that the cars were departing. And
2 from where I lived to the border, there is one hour by
3 car. And I called him but during one of those
4 conversations one day, he said he was going to pay me
5 extra money for doing it. That I would get paid \$500 to
6 \$1,000 for the cars to get all the way up to Phoenix.

7 And I remember doing this with about three
8 different cars. I -- I never actually received the money
9 because according to him, the cars never actually made it
10 to the destination. They were apparently intercepted or
11 something.

12 So after all of those things happened with
13 those people, I stopped my participation and I did this
14 starting in April up to like the month of August or
15 September of 2015. It was four or five months
16 participation with these people.

17 THE COURT: Okay. And did you participate
18 knowingly and intentionally?

19 THE DEFENDANT: Yes, I -- and I knew this was
20 against the law. Yes.

21 THE COURT: And just so I am clear, the cars
22 were going from -- with the marijuana were going from
23 Mexico to the United States?

24 THE DEFENDANT: Yes, from Mexico in Puerto
25 Penasco, Sonora, all the way to Phoenix.

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1 THE COURT: Okay. And something we had touched
2 on earlier, which is it correct, you agreed to waive the
3 venue, so that this case can go forward in this district
4 in Brooklyn, even though these events that you just
5 talked about happened in Mexico and the border states, is
6 that correct?

7 THE DEFENDANT: Yeah, I am already here and I
8 would like to continue here.

9 THE COURT: Okay. All right. So Mr.
10 Villanueva, is there anything else you would like your
11 client to add to that allocution?

12 MR. VILLANUEVA: No, your Honor.

13 THE COURT: All right. And for the government,
14 is that a satisfactory allocution?

15 MR. GILMAN: Did we -- and I apologize if I
16 missed it, your Honor, did he submit that he knew that
17 the cars contained drugs? Did he say that at some point?

18 THE COURT: I thought he said that the person
19 -- I understood what happened, he said he had the
20 conversation with the person who then sent Americans to
21 his hotel and they had the cars. They loaded the cars
22 from his hotel with marijuana. His task was to call and
23 say that those cars were leaving and -- from Mexico. He
24 lives -- the hotel is about an hour from the border. And
25 then go on.

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1 MR. GILMAN: That's --

2 THE COURT: I mean, we can clarify but I think
3 -- so Mr. Hindu, did you know that the cars about which
4 you were calling had marijuana in them?

5 THE DEFENDANT: Yes, the three cars that I had
6 to do with, I was aware that there was marijuana in them.
7 I just never got paid for it because apparently they were
8 intercepted.

9 MR. GILMAN: Thank you, your Honor.

10 THE COURT: All right. So just for the record,
11 that's a satisfactory allocution for the government?

12 MR. GILMAN: Yes. And at trial, your Honor, we
13 also would prove the interstate nexus component involved
14 in trafficking drugs.

15 THE COURT: Did we talk about crossing the
16 border?

17 MR. GILMAN: And sorry, crossing the border, of
18 course, in foreign --

19 THE COURT: Yes. And he said -- okay, just
20 again, the cars are going from an hour south of the
21 border in Mexico, aiming for Phoenix in the United
22 States.

23 Is that correct?

24 MR. GILMAN: That's correct.

25 THE COURT: All right. Mr. Hindu, that's

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1 correct?

2 THE DEFENDANT: Yes, yes, yes, I think
3 supposedly at some part along the way, they were -- they
4 were intercepted.

5 (Counsel and client confer)

6 THE COURT: Okay. So for the government, do
7 you have any other concerns about the allocution?

8 MR. GILMAN: Nothing further from the
9 government, your Honor. Thank you.

10 THE COURT: Okay. All right. Let me ask you a
11 few other questions, Mr. Hindu.

12 Are you pleading guilty voluntarily and of your
13 own free will?

14 THE DEFENDANT: Yes.

15 THE COURT: Has anyone threatened or forced you
16 to plead guilty?

17 THE DEFENDANT: No, nobody, no.

18 THE COURT: Other than the promises that are
19 contained in the written agreement that you entered into
20 with the government, which is the document marked as
21 Government Exhibit 2, has anyone made any other promises
22 to you to get you to plead guilty?

23 THE DEFENDANT: No, nobody. No, thank you.

24 THE COURT: And is it --

25 THE DEFENDANT: Nobody else offered anything

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1 else.

2 THE COURT: Has anyone made any promises to you
3 as to what your final sentence will be?

4 THE DEFENDANT: No, I haven't been told
5 anything like that.

6 THE COURT: All right. Do you still want to go
7 ahead with this guilty plea even though your removal from
8 the United States is very, very likely, as a consequence
9 of your entering this plea?

10 THE DEFENDANT: I wish it wouldn't have to
11 happen but if it will happen, I will accept it.

12 THE COURT: And are you pleading guilty of your
13 own free will because you are, in fact, guilty?

14 THE DEFENDANT: Yes.

15 THE COURT: All right. Based on the
16 information given to me here today, I believe Mr. Hindu
17 is fully competent, that he is capable of entering an
18 informed plea, that he is acting voluntarily, that he
19 understands the charge against him, that he understands
20 his rights and the consequences of the plea and that
21 there's a factual basis for the plea as to each of the
22 essential elements of the offense, which is the lesser
23 included offense of Count 2, international marijuana
24 distribution conspiracy in the superseding indictment.

25 So, I therefore respectfully recommend that

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1 Judge Block accept the plea of guilty to that count.

2 Do we have a sentencing date from Mike?

3 MR. GILMAN: No.

4 THE COURT: No. Okay.

5 MR. GILMAN: We have a next status conference
6 coming up in October before Judge Block.

7 THE COURT: All right. The medical issues that
8 came up, do you need any assistance from the Court or are
9 you going to bring it up with Judge Block or are they
10 getting resolved? What's going on?

11 MR. VILLANUEVA: This is an issue that's been
12 ongoing since Mr. Hindu's arrest and the district court
13 has been aware of it, there has been communication back
14 and forth between the Court, the legal department, as
15 well as the medical department at MDC.

16 THE COURT: Okay. All right.

17 Are there any motions?

18 MR. GILMAN: The government moves to exclude
19 time until -- I think time is excluded until the next --
20 I think we're okay, your Honor.

21 THE COURT: All right. What about the record?

22 MR. GILMAN: I apologize. Time -- just for the
23 purposes of the record, the speedy trial clock is tolled
24 at the moment by order of Judge Block until our next
25 status conference --

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1 THE COURT: Okay.

2 MR. GILMAN: -- which is scheduled for October
3 6th, your Honor.

4 THE COURT: Okay. I am wondering, this started
5 out as a question about whether this was a John Doe. Are
6 there any motions on that front?

7 MR. GILMAN: Not from the government, your
8 Honor. I guess --

9 THE COURT: You're looking at me. Sometimes
10 when it's a John Doe case, there's a request for the
11 transcript to be sealed.

12 MR. GILMAN: Oh, I see.

13 THE COURT: I was wondering if that is
14 something that is happening in this case or not. I don't
15 have enough of a context to know where the John Doe issue
16 came from. I'll let you talk about.

17 (Counsel and client confer)

18 MR. GILMAN: The defense and the government
19 agrees that there still is sufficient basis for sealing,
20 your Honor.

21 THE COURT: Why don't you state -- are there
22 safety concerns or something --

23 MR. GILMAN: There are safety concerns that are
24 implicated.

25 THE COURT: Okay. So that the record is

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1 sealed. All right.

2 Anything else? Nope?

3 MR. VILLANUEVA: No, thank you very much for --

4 THE COURT: All right.

5 MR. GILMAN: Nothing from the government.

6 MR. VILLANUEVA: -- the Court's patience

7 (indiscernible).

8 THE COURT: Okay. Thank you, your Honor. Take

9 care.

10 MR. GILMAN: Thank you, your Honor.

11 THE COURT: I'm going to give you back

12 Government's Exhibit 2 and you're holding on to

13 Government's Exhibit 1, right?

14 MR. GILMAN: Yep. Thank you, your Honor, for

15 sticking with us (indiscernible).

16 MR. VILLANUEVA: Thank you, your Honor.

17 THE COURT: All right.

18 (Matter concluded)

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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 26th day of October, 2017.


Linda Ferrara

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